IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 25TH JULY 2007 / 3RD SRAVANA 1929

Crl.MC.No. 2388 of 2007()

CRA.294/2002 of ADDL. SESSIONS JUDGE (ADHOC) II, KASARAGOD
CC.685/1999 of CHIEF JUDICIAL MAGISTRATE, KASARAGOD

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PETITIONER/ACCUSED:

SHASHI 27 YEARS, S/O. ANANDA
DEVI RESTAURANT, KUNJATHUR
UDYAVAR, KUNJATHUR, KASARAGOD.

BY ADV. SRI.T.B.SHAJIMON

RESPONDENTS/COMPLAINANT/STATE:

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1. B.M. DINESH, S/O. KORANGA GURIKARA
   R/NEAR KASHIMETTA,
   BANGARAMANJESWARA, MANJESHWARA
   KASARAGOD DT.

2. STATE OF KERALA, REP. BY THE PUBLIC
   PROSECUTOR, HIGH COURT OF KERALA
   ERNAKULAM.

R2 BY PUBLIC PROSECUTOR SRI. GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 25/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 2388 of 2007

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Dated this the 25th day of July, 2007

O R D E R

The petitioner is the accused in a prosecution under Section 138 of the N.I. Act. He has been found guilty, convicted and sentenced. The verdict of guilty, conviction and sentence have now become final with the order passed by this Court in revision. The petitioner is now bound to undergo the substantive sentence of imprisonment till rising of court. He is further directed "to pay" an amount of Rs.10,000/- as compensation to the complainant and in default to undergo S.I. for a period of two months. The petitioner was directed to appear before the learned Magistrate on 30.1.2007 to serve the sentence. He did not appear before the learned Magistrate. He has now come before this Court with a prayer that the verdict of guilty, conviction and sentence may be set aside accepting the composition.

2. What is the reason? The learned counsel for the petitioner submits that such post revision composition is now permitted by the decision in **Sabu George** v. **Home Secretary** (2007 (1) KLT 982). I am afraid the dictum in **Sabu George** has not been understood

correctly. The dictum in **Sabu George** is only that powers under Section 482 Cr.P.C. can be invoked in an appropriate case and a case where inspite of composition of a compoundable offence an accused person will have to undergo incarceration for a long period of time is a just ground to invoke such extra ordinary inherent jurisdiction. **Sabu George** is not authority for the proposition that any and every post revision composition is justified and can be accepted.

3. In the instant case, the petitioner has to undergo substantive sentence of imprisonment till rising of court only. He is of course liable to pay the amount of Rs. 10,000/- According to him, such amount has already been paid to the complainant. There is no direction to deposit the amount. The direction is only to pay the amount. If such amount has been paid, there is no question of the default sentence being enforced against the petitioner. The position has been made clear in the decision in **Girish** v. **Muthoot Capital Services (P) Ltd.** (2007 (2) KLT 16). I do not find any justifiable reason to invoke the extra ordinary inherent jurisdiction under Section 482 Cr.P.C. The interests of justice do not compellingly demand or warrant invocation of such power.

4. This Crl.M.C. is accordingly dismissed. I may hasten to observe that if the petitioner and the complainant appear before the learned Magistrate and satisfy the learned Magistrate that the direction for payment of compensation has been complied with, the learned Magistrate shall not execute the default sentence, but shall only insist and ensure that the petitioner undergoes the substantive sentence of imprisonment till rising of court.

(R. BASANT)
Judge

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